

AMENDED IN ASSEMBLY JUNE 20, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 31, 2005

---

---

**SENATE BILL**

**No. 768**

**Introduced by Senator Simitian**

*(Principal coauthor: Assembly Member Parra)*

February 22, 2005

---

---

An act to amend Section 15400 of, and to add Sections 54.5 and 15008 to, the Fish and Game Code, and to amend Section 30411 of the Public Resources Code, relating to aquaculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, Simitian. Marine finfish aquaculture.

(1) Existing law authorizes the Fish and Game Commission to lease state water bottoms to any person for aquaculture, and authorizes the commission to adopt regulations governing the terms of the leases. Existing law prohibits state water bottoms from being leased, unless the commission determines that the lease is in the public interest.

This bill would prohibit a person from engaging in marine finfish aquaculture, as defined, without a lease from the commission. The bill would require leases and regulations adopted by the commission for marine finfish aquaculture to meet certain standards.

(2) The California Coastal Act requires the Department of Fish and Game, in consultation with the Aquaculture Development Committee, to prepare programmatic environmental impact reports for existing

and potential commercial aquaculture operations in both coastal and inland areas of the state if certain conditions are met.

This bill would require that if a final programmatic environmental impact report is prepared pursuant to that requirement for coastal marine finfish aquaculture projects approved by the commission, the report ensure that marine finfish aquaculture is managed in a sustainable manner that adequately considers specified environmental factors.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The United States Commission on Ocean Policy recently  
4 determined that the farming of marine species is a rapidly  
5 growing domestic and international industry that could become  
6 an important source of seafood for the United States.

7 (b) The United States Commission on Ocean Policy also  
8 determined that the growth of marine aquaculture ~~presents~~  
9 ~~potential threats to the marine environment because of an~~  
10 ~~inadequate regulatory regime, and that the management of~~  
11 ~~marine aquaculture activities should minimize potential adverse~~  
12 ~~environmental impacts including~~ *may have impacts on the*  
13 *marine environment under the current regulatory regime, and*  
14 *that the management of marine aquaculture activities should*  
15 *focus on minimizing potential adverse environmental impacts,*  
16 *including the following:* the spread of disease and parasites;  
17 contamination of and competition with wild fish stocks;  
18 degradation of water quality, wetlands and other natural habitats;  
19 contamination from fish wastes, dead fish, uneaten food and  
20 antibiotics; harmful interactions with birds, marine mammals and  
21 wildlife; conflicts with commercial and recreational activities;  
22 introduction of nonnative species; and ecosystem effects from the  
23 use of fish meal.

24 (c) Marine aquaculture can also have adverse economic  
25 impacts on commercial fisheries of wild fish stocks.

26 (d) The United Nations Food and Agriculture Organization  
27 estimates that by 2030 more than half of the fish consumed

1 globally will be produced through aquaculture, and has issued a  
2 Code of Conduct for Responsible Fisheries that calls for  
3 measures to monitor and minimize adverse impacts from marine  
4 aquaculture.

5 (e) In 2003, California banned the cultivation of salmon,  
6 transgenic fish species, and exotic finfish species in the waters of  
7 the Pacific Ocean regulated by the state, but comprehensive  
8 standards do not exist to address the full range of potential  
9 adverse impacts of marine finfish aquaculture in state waters.

10 (f) Marine finfish aquaculture is a young and growing  
11 industry, and many of its environmental impacts should be  
12 addressed now before serious ecological damage occurs.

13 (g) Therefore, it is the intent of the state to act now to manage  
14 marine finfish aquaculture in a precautionary and  
15 environmentally sustainable manner.

16 SEC. 2. Section 54.5 is added to the Fish and Game Code, to  
17 read:

18 54.5. "Marine finfish aquaculture" means the propagation,  
19 cultivation, or maintenance of finfish animals in the waters of the  
20 Pacific Ocean that are regulated by this state.

21 SEC. 3. Section 15008 is added to the Fish and Game Code,  
22 to read:

23 15008. (a) The department shall, in consultation with the  
24 Aquaculture Development Committee, prepare programmatic  
25 environmental impact reports for existing and potential  
26 commercial aquaculture operations in both coastal and inland  
27 areas of the state if both of the following conditions are met:

28 (1) Funds are appropriated to the department for this purpose.

29 (2) Matching funds are provided by the aquaculture industry.

30 (b) If the final programmatic environmental impact report is  
31 prepared pursuant to subdivision (a) for coastal marine finfish  
32 aquaculture projects and approved by the commission under the  
33 California Environmental Quality Act set forth in Division 13  
34 (commencing with Section 21000) of the Public Resources Code,  
35 the report shall ensure that marine finfish aquaculture is managed  
36 in an environmentally sustainable manner that, at a minimum,  
37 adequately considers all of the following factors:

38 (1) Appropriate areas for siting marine finfish aquaculture  
39 operations to avoid impacts on user groups, public trust values,  
40 and the marine environment.

1 (2) The effects on sensitive ocean and coastal habitats.

2 (3) The effects on marine ecosystems, commercial and  
3 recreational fishing and other important ocean uses, and public  
4 trust values.

5 (4) The effects on other plant and animal species, especially  
6 species protected or recovering under state and federal law.

7 (5) The effects of the use of chemical and biological products  
8 and pollutants and nutrient wastes on human health and the  
9 marine environment.

10 (6) The effects of interactions with marine mammals and  
11 birds.

12 (7) The cumulative effects ~~on the marine environment~~ of a  
13 *number of similar finfish aquaculture projects on the ability of*  
14 *the marine environment to support ecologically significant flora*  
15 *and fauna.*

16 (8) The effects of feed, fish meal, and fish oil on marine  
17 ecosystems.

18 (9) The effects of escaped fish on wild fish stocks and the  
19 marine environment.

20 (10) The design of facilities and farming practices so as to  
21 avoid environmental impacts.

22 SEC. 4. Section 15400 of the Fish and Game Code is  
23 amended to read:

24 15400. (a) Except as prohibited by Section 15007, the  
25 commission may lease state water bottoms or the water column  
26 to any person for aquaculture, including, but not limited to,  
27 marine finfish aquaculture. The commission shall adopt  
28 regulations governing the terms of the leases. No state water  
29 bottoms shall be leased, unless the commission determines that  
30 the lease is in the public interest in a public hearing conducted in  
31 a fair and transparent manner, with notice and comment, in  
32 accordance with commission procedures.

33 (b) A person shall not engage in marine finfish aquaculture  
34 without a lease from the commission. Leases and regulations  
35 adopted by the commission for marine finfish aquaculture shall  
36 meet, but are not limited to, all of the following standards:

37 (1) The lease site is considered appropriate for marine finfish  
38 aquaculture in the programmatic environmental impact report if  
39 prepared pursuant to Section 15008.

1 (2) A lease shall not unreasonably interfere with fishing or  
2 other uses or public trust values, disrupt wildlife and marine  
3 habitats, or harm the ability of the marine environment to support  
4 ecologically significant flora and fauna.

5 (3) The use of fish meal and fish oil shall be minimized.

6 (4) Leases may be for a period of 10 years, renewable every  
7 five years at the discretion of the commission. Fees shall, at a  
8 minimum, be sufficient to pay for the costs of administering the  
9 marine finfish aquaculture program, and monitoring and  
10 enforcing the terms of the leases.

11 (5) Fish stocks and facilities shall be monitored regularly and  
12 at least annually, and fish stocks shall be removed and facilities  
13 closed if the commission determines that the facilities or  
14 operations pose a threat to the marine environment.

15 (6) Lessees shall provide baseline assessments of the proposed  
16 lease site to the commission prior to the issuance of the lease, and  
17 shall monitor the benthic habitat during operation of the lease in  
18 a manner determined by the commission. Lessees shall be  
19 responsible for damages to human health and the marine  
20 environment caused by their operations, and for restoring the  
21 lease site to prepermit conditions. The commission shall require  
22 financial assurances of each lessee to ensure that restoration is  
23 performed to the satisfaction of the commission. Financial  
24 assurances may take the form of surety bonds executed by an  
25 admitted surety insurer, irrevocable letters of credit, trust funds,  
26 or other forms specified by the commission as it reasonably  
27 determines is available and adequate to ensure the site is restored  
28 pursuant to this section.

29 (7) Finfish numbers and density shall be limited to what can  
30 be safely raised while protecting the marine environment.

31 (8) Adverse interactions with marine mammals and other  
32 marine wildlife shall be prevented.

33 (9) The use of all drugs, chemicals, and antibiotics, and  
34 amounts used and applied, shall be minimized. All  
35 pharmaceuticals, chemicals, and antibiotics, and the amounts  
36 used and applied, shall be approved by the United States Food  
37 and Drug Administration for marine finfish aquaculture, and  
38 reported to and reviewed by the commission on a regular basis  
39 and at least annually.

1 (10) The commission shall require all farmed fish to be  
2 marked, tagged, or otherwise identified as belonging to the lessee  
3 in a manner determined appropriate by the commission.

4 (11) All facilities and operations shall be designed to prevent  
5 the escape of farmed fish into the marine environment. In the  
6 event of escapes, all escaped fish shall be reported immediately  
7 to the commission, and the lessee shall be responsible for  
8 damages to the marine environment caused by those escaped  
9 fish.

10 (12) The lessee shall, at a minimum, meet all applicable  
11 requirements imposed by the State Water Resources Control  
12 Board and the regional water quality control boards, and shall  
13 prevent discharges to the maximum extent possible. Monitoring  
14 and testing of water quality shall be required on a regular basis as  
15 deemed appropriate by the State Water Resources Control Board  
16 or the regional water quality control boards. All inspection and  
17 monitoring reports and other records, and all data on the  
18 discharge of chemical and biological pollutants shall be kept on  
19 file and available for public review.

20 (c) If a restoration or enhancement plan is submitted to, and  
21 approved by, the commission and that plan, among other things,  
22 provides for monitoring and protecting the benthic habitat, the  
23 prevention of pollution, and the prevention of adverse impacts on  
24 wild fish stocks from disease, parasites, and genetic alterations,  
25 subdivision (b) shall not apply to any of the following:

26 (1) Artificial propagation, rearing, and stocking projects for  
27 the purpose of recovery, restoration, or enhancement of native  
28 fish stocks carried out under either of the following:

29 (A) A scientific collecting or research permit issued by the  
30 department.

31 (B) The California Ocean Resources Enhancement and  
32 Hatchery Program, as set forth in Article 8 (commencing with  
33 Section 6590) of Chapter 5 of Part 1 of Division 6, for the  
34 enhancement of white sea bass implemented pursuant to a  
35 memorandum of agreement by the California Coastal  
36 Commission, the department, and the California Ocean  
37 Resources Enhancement Advisory Panel. For the purposes of this  
38 subparagraph, the memorandum of agreement related to the  
39 California Ocean Resources Enhancement and Hatchery Program

1 meets the requirement for a restoration or enhancement plan  
2 pursuant to this subdivision.

3 (2) Nonprofit hatcheries and nonprofit artificial propagation  
4 projects operated by, or on behalf of, licensed commercial or  
5 sport fishermen and fisherwomen for the purpose of recovery,  
6 restoration, or enhancement of California's native marine fish  
7 populations, pursuant to Chapter 8 (commencing with Section  
8 6900) of Part 1 of Division 6.

9 SEC. 5. Section 30411 of the Public Resources Code is  
10 amended to read:

11 30411. (a) The Department of Fish and Game and the Fish  
12 and Game Commission are the principal state agencies  
13 responsible for the establishment and control of wildlife and  
14 fishery management programs, and the commission shall not  
15 establish or impose any controls with respect thereto that  
16 duplicate or exceed regulatory controls established by these  
17 agencies pursuant to specific statutory requirements or  
18 authorization.

19 (b) The Department of Fish and Game, in consultation with  
20 the commission and the Department of Boating and Waterways,  
21 may study degraded wetlands and identify those which can most  
22 feasibly be restored in conjunction with development of a boating  
23 facility as provided in subdivision (a) of Section 30233. Any  
24 study conducted under this subdivision shall include  
25 consideration of all of the following:

26 (1) Whether the wetland is so severely degraded and its natural  
27 processes so substantially impaired that it is not capable of  
28 recovering and maintaining a high level of biological  
29 productivity without major restoration activities.

30 (2) Whether a substantial portion of the degraded wetland, but  
31 in no event less than 75 percent, can be restored and maintained  
32 as a highly productive wetland in conjunction with a boating  
33 facilities project.

34 (3) Whether restoration of the wetland's natural values,  
35 including its biological productivity and wildlife habitat features,  
36 can most feasibly be achieved and maintained in conjunction  
37 with a boating facility or whether there are other feasible ways to  
38 achieve these values.

39 (c) The Legislature finds and declares that salt water or  
40 brackish water aquaculture is a coastal-dependent use which

1 should be encouraged to augment food supplies and to further the  
2 policies set forth in Chapter 4 (commencing with Section 825) of  
3 Division 1. The Department of Fish and Game may identify  
4 coastal sites it determines to be appropriate for aquaculture  
5 facilities. If the department identifies these sites, it shall transmit  
6 information identifying the sites to the commission and the  
7 relevant local government agency. The commission, and where  
8 appropriate, local governments, shall, consistent with the coastal  
9 planning requirements of this division, provide for as many  
10 coastal sites identified by the Department of Fish and Game for  
11 any uses that are consistent with the policies of Chapter 3  
12 (commencing with Section 30200) of this division.

13 (d) Any agency of the state owning or managing land in the  
14 coastal zone for public purposes shall be an active participant in  
15 the selection of suitable sites for aquaculture facilities, and shall  
16 make the land available for use in aquaculture when feasible and  
17 consistent with other policies of this division and other  
18 provisions of law.